

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

COOK INLET TRIBAL COUNCIL, INC.,	)	
3600 San Jeronimo Drive	)	
Anchorage, Alaska 99508,	)	
	)	
Plaintiff,	)	
v.	)	
	)	Case No. _____
CHRISTOPHER MANDREGAN, JR.,	)	
Director, Alaska Area Office,	)	
U.S. Indian Health Service,	)	
4141 Ambassador Drive, Suite 300	)	
Anchorage, AK 99508,	)	
	)	
and	)	
	)	
SYLVIA MATHEWS BURWELL,	)	
Secretary, U.S. Department of Health	)	
& Human Services,	)	
200 Independence Avenue, S.W.	)	
Washington, D.C. 20201,	)	
	)	
and	)	
	)	
UNITED STATES OF AMERICA,	)	
	)	
Defendants.	)	
_____	)	

**COMPLAINT**

Plaintiff Cook Inlet Tribal Council, Inc., by and through its attorneys Sonosky, Chambers, Sachse, Miller & Munson, LLP, complains and alleges as follows:

**I. INTRODUCTION**

1. Cook Inlet Tribal Council (CITC) seeks injunctive relief to compel the Secretary to award a proposed contract amendment awarding CITC certain contract support costs to which CITC is entitled by law. Specifically, the Secretary has unlawfully refused to reimburse CITC

for the facility support costs CITC incurs while operating certain Alaska Native substance abuse programs under its contract with the Secretary. These costs are a type of “contract support costs” the Secretary is required to pay a contractor pursuant to 25 U.S.C. § 450j-1(a)(3)(A)(i) of the Indian Self-Determination Act (ISDA).

2. Defendant declined to award CITC’s proposed contract amendment to add funding for CITC’s facility costs, insisting the Secretary had already provided some funding for these costs and that this partial funding relieved the Secretary of any further duty to pay CITC’s full costs. Defendant’s assertion is incorrect because the ISDA mandates the Secretary must add to a contract the “full” amount of a contractor’s contract support cost requirement. 25 U.S.C. § 450j-1(a)(2), (g).

3. By failing to include full facilities funding as part of CITC’s current contract, the Secretary has breached her legal obligations to CITC. CITC seeks an order compelling IHS to award CITC additional facilities costs for FY 2014, as authorized under the special remedial provisions established in 25 U.S.C. § 450m-1.

## **II. JURISDICTION**

4. This Court has jurisdiction over this action pursuant to 25 U.S.C. § 450m-1(a) of the ISDA, and 28 U.S.C. §§ 1331.

## **III. PARTIES**

5. Cook Inlet Tribal Council, Inc. is the Alaska Native tribal health organization designated to provide health care services to beneficiaries of IHS programs and other eligible individuals by Cook Inlet Region, Inc. CITC qualifies as a “tribal organization” under § 450b(l).<sup>1</sup> CITC is organized as a not-for-profit Alaska corporation, and includes on its Board

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<sup>1</sup> Unless otherwise noted, all statutory references are to Title 25 of the United States Code.

representatives of eight federally-recognized Tribes: the Chickaloon Village Traditional Council, the Native Village of Eklutna, the Kenaitze Indian Tribe, the Knik Tribal Council, the Ninilchik Traditional Council, the Salamatof Tribal Council, the Seldovia Village Tribe, and the Native Village of Tyonek.

6. Sylvia Mathews Burwell is the Secretary of the U.S. Department of Health and Human Services. Secretary Burwell exercises authority delegated to her by Congress to carry out the ISDA.

7. Christopher Mandregan, Jr. is the Area Director of the IHS Alaska Area Office (“Area Director”). Mr. Mandregan exercises authority delegated to him by Secretary Burwell, through the Director of the U.S. Indian Health Service, Dr. Yvette Roubideaux, to carry out the Secretary’s responsibilities under the ISDA and other applicable law. As used throughout this Complaint (and unless context commands otherwise), the terms “Secretary,” “HHS,” “IHS,” and “Area Director” are used interchangeably.

#### **IV. FACTS AND GENERAL ALLEGATIONS**

##### **A. The Indian Self-Determination Act**

8. The purpose of the ISDA is to assure “maximum Indian participation” in the provision of services to Indian communities. § 450a(a). The Act seeks to achieve this purpose through the “establishment of a meaningful Indian self-determination policy” which provides for the transition of federal programs serving Indian Tribes from IHS operation to tribal operation. § 450a(b).

9. Under Title I of the ISDA, “upon the request of any Indian tribe by tribal resolution, to enter into a self-determination contract” Congress requires the Secretary to contract

with the tribal organization to plan, conduct and administer the programs that otherwise would be administered by the Secretary. § 450f(a)(1).

10. The model contract in Title I requires the Secretary to “make available to the Contractor the total amount specified in the annual funding agreement incorporated by reference” into the contract. § 450l(c) (Model Agreement, § 1(b)(4)). This funding amount “shall not be less than the applicable amount determined pursuant to section 106(a) of the [ISDA].” *Id.*

11. When a tribal organization submits a proposal to amend an existing self-determination contract, the Secretary has ninety days to review that proposal. § 450f(a)(2). Within ninety days of receiving the proposal, the Secretary must

approve the proposal and award the contract unless the Secretary provides written notification . . . that contains a specific finding that clearly demonstrates that, or that is supported by a controlling legal authority that—

- (A) the service to be rendered to the Indian beneficiaries of the particular program or function to be contracted will not be satisfactory;
- (B) adequate protection of trust resources is not assured;
- (C) the proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract;
- (D) the amount of funds proposed under the contract is in excess of the applicable funding level for the contract, as determined under section 450j-1(a) of this title; or
- (E) the program, function, service, or activity (or portion thereof) that is the subject of the proposal is beyond the scope of [PSFAs covered by the Act] because the proposal includes activities that cannot lawfully be carried out by the contractor.

*Id.* (emphasis added).

12. In a civil action challenging the Secretary's declination of a proposal under one of the five reasons listed in paragraph 11, above, "the Secretary shall have the burden of proof to establish by clearly demonstrating the validity of the grounds for declining the contract proposal . . . ." § 450f(e)(1).

### **B. CITC's Contract History**

13. Since 1992, CITC has contracted with the Indian Health Service under the ISDA to operate various Federal health care programs, services, functions and activities (hereinafter "programs"), mostly related to substance abuse treatment and recovery services.

14. Since FY 1996, CITC has operated its federal IHS programs pursuant to Contract No. 243-96-6003 ("Contract"). The Contract states that "[e]ach provision of the [ISDA] and each provision of the Contract shall be liberally construed for the benefit of the Contractor . . . ." Contract, § (a)(2). The ISDA contains an identical provision. § 450l(c) (Model Agreement, § (1)(a)(2)).

15. The Contract also includes CITC's annual funding agreements, which describe, among other things, the programs CITC will operate and the funding CITC will receive. CITC's funding agreements were incorporated in their entirety into the Contract. See Contract, § (b)(15)(F)(2)(B).

16. At the time it submitted its proposal, CITC operated IHS programs under a fiscal year 2014 funding agreement.

17. CITC first contracted with IHS in 1992. At that time, CITC submitted a proposal to IHS seeking funds to provide "Primary Residential Treatment at the Alaska Native Alcohol Recovery Center." In addition to residential treatment, CITC also proposed to continue and improve "[a]ftercare services to reduce relapse potential and prevent continuing alcoholism and

drug abuse” among the people it serves and “[c]ulturally-relevant treatment to achieve the greatest possible improvement in the over[]all health status and quality of life of the Alaska Native people” whom CITC serves.

18. CITC’s 1992 total IHS contract was for \$150,000. On information and belief, this amount included, at most, \$6,051 for facilities funding and \$5,787.50 to fund a portion of a facilities coordinator salary, for a total of \$11,838.50 in facilities-related costs.

19. CITC’s programs have expanded since it first contracted with IHS in 1992. In addition to the Alaska Native Alcohol Recovery Center (now known as the Ernie Turner Center), CITC operates a number of outpatient facilities. CITC received a total of \$2,518,559 under its IHS contract for 2014. This sum included the \$11,838.50 for facilities-related costs that IHS has annually paid CITC since 1992, as alleged in paragraph 18, above.

20. CITC incurred \$479,040 in facilities costs for FY 2013 in carrying out the Contract.

### **C. The Amount of Funding Provided Under the Contract**

21. The ISDA provides that tribal organizations that choose to contract for the operation of federal programs shall be paid two types of funding. First, tribal contractors are entitled to be paid the Secretary’s program funds. § 450j-1(a)(1). Second, tribal organizations are entitled to be paid “contract support costs” (CSC). § 450j-1(a)(2), (3). Both of these sums are required to be added in “full” upon contract award. § 450j-1(g).

22. The first referenced subsection, subsection 450j-1(a)(1), provides for the direct program funding, also called the “Secretarial amount,” representing “the amount the Secretary would have expended had the government itself [continued to] run the program.” *Arctic Slope*

*Native Ass'n, v. Sebelius*, 629 F.3d 1296, 1298–99 (Fed. Cir. 2010), *vacated on other grounds*, 133 S. Ct. 22 (2012).

23. In addition to paying the “Secretarial amount,” the ISDA also requires IHS to pay contract support costs. Subsection 450j-1(a)(2) provides that:

There shall be added to the amount required by paragraph (1) [*i.e.* to the Secretarial amount required by § 450j-1(a)(1)] contract support costs which shall consist of an amount for the reasonable costs for activities which must be carried on by a tribal organization as a contractor to ensure compliance with the terms of the contract and prudent management . . . .

24. “Contract support costs” include, but are not limited to, “indirect administrative costs, such as special auditing or other financial management costs,” *Cherokee Nation v. Leavitt*, 543 U.S. 631, 635 (2005) (citing § 450j-1(a)(3)(A)(ii)), and certain “direct costs, such as workers’ compensation insurance” for certain costs attributable directly to the personnel and facilities covered by the program funds, *id.* at 635 (citing § 450j-1(a)(3)(A)(i)).

25. According to IHS, direct contract support costs include “facilities support costs to the extent not already made available . . . .” Indian Health Service Contract Support Cost Manual (IHM) § 6-3.2D.

26. The ISDA specifies that a Tribe’s contract support cost requirement may not duplicate costs already paid to a Tribe as part of the Secretarial amount. § 450j-1(a)(3)(A). In adding this provision, Congress specified that “[i]n the event the Secretarial amount under section 106 (a) (1) for a particular function proves to be insufficient in light of a contractor’s needs for prudent management of the contract, contract support costs are to be available to supplement such sums.” S. Rep. 103-374 at 9.

#### **D. The Disputed DCSC Requirement**

27. In 2013, CITC informed the agency that it wished to renegotiate its direct contract support costs.

28. Throughout the subsequent negotiations, IHS refused to increase CITC's DCSC requirement to provide additional facilities funding.

29. On April 11, 2014, CITC submitted to the agency a proposal to amend its FY 2014 funding agreement to include \$479,040 in direct contract support cost funding for the facility costs CITC was incurring to carry out the contracted programs.

30. On July 7, 2014, Defendant Area Director issued a letter declining CITC's contract amendment proposal because, according to IHS, "the amount of funds proposed under the contract is in excess of the applicable funding level for the contract."

31. At no time did the letter referred to in paragraph 30 allege that these facility costs were not actually incurred by CITC. At no time did the letter referred to in paragraph 30 allege that these facility costs were not prudent to carry out the programs covered by CITC's contract with IHS. At no time did the letter referred to in paragraph 30 allege that these facility costs were not reasonably necessary to carry out the programs covered by CITC's contract with IHS.

#### **V. FIRST CAUSE OF ACTION**

##### **(Failure to Award Contract Amendment For Additional Facilities Support Funding)**

32. CITC incorporates all previous allegations of fact and law into this Cause of Action.

33. Defendant Area Director rejected CITC's request for additional facilities funding because he claimed facilities support costs had already been provided "as part of CITC's



program base,” and thus the requested funding duplicated the Secretarial amount and therefore exceeded “the applicable funding level for the contract.”

34. The sums requested by CITC do not duplicate the Secretarial amount. CITC’s facilities costs have grown exponentially over time and CITC now incurs no less than \$479,040 in facilities costs. Thus, the \$11,838.50 included as part of the Secretarial amount in 1992 is wholly insufficient for CITC to prudently manage its contract. § 450j-1(a)(2); S. Rep. 103-374 at 9. CITC is therefore entitled to CSC facility costs to supplement the \$11,838.50 in facility costs allegedly included in the Secretarial amount.

35. The facility costs CITC requested do not exceed the applicable funding level for the contract because CITC is entitled to receive funding for “facilities support costs to the extent not already made available.” IHM § 6-3.2D. As noted above, at most only \$11,838.50 has been made available to CITC. Therefore, CITC is entitled to receive funding to reimburse the balance of CITC’s facilities costs. This amount must by law be added in “full” to CITC’s contract. § 450j-1(g).

36. Defendant Area Director has failed to carry the heavy burden of proof he carries, as set forth in § 450f(e)(1), to justify the rejection of CITC’s contract proposal for additional facility support funds. That section requires the Area Director to “clearly demonstrat[e] the validity” of the reason for his denial. But this the Area Director has not done.

37. The Area Director alleged that facilities support costs had already been provided “as part of CITC’s program base” (*i.e.*, as part of the Secretarial amount), but the Area Director never alleged, much less demonstrated, what exact portion of the original 1992 \$150,000 contract covered facility costs. Instead, the Area Director refers to a Business Proposal created

by CITC in 1992, when it first sought to contract for these funds. Nonetheless, for purposes of this appeal CITC has credited IHS with \$11,838.50 in alleged facility cost payments.

38. IHS has acted unlawfully in failing to award CITC's proposed contract amendment for additional direct contract support costs. Mr. Mandregan has not "clearly demonstrate[ed] the validity of the grounds for declining the contract proposal . . . ." § 450f(e)(1).

39. The ISDA confers upon a tribal contractor a special statutory right to immediate injunctive relief to reverse a declination finding or a rejection of a contract proposal, or to compel the Secretary to award and fund an approved self-determination contract, and to compel a United States officer or agency to perform a duty provided under the ISDA. § 450m-1(a).

40. IHS's refusal to award CITC's proposed contract amendment adding additional funds for CITC's direct contract support cost requirement associated with facility support costs is contrary to law. CITC is entitled to immediate injunctive relief to award the contract amendment as proposed and to payment of the increased direct contract support cost funding specified in that proposal.

## **VI. RELIEF REQUESTED**

WHEREFORE, the Cook Inlet Tribal Council prays that this Court grant the following relief:

A. A declaratory judgment that the Secretary acted in violation of the ISDA by declining to approve and award CITC's contract amendment for additional direct contract support costs;

B. An immediate injunction compelling IHS to enter into the proposed contract amendment awarding CITC additional direct contract support cost funds in the amount of \$467,201.50, and to compel the immediate payment of these funds;

C. Costs and attorneys' fees incurred in pursuing these claims, including the appeal before this Court, as provided for under the Equal Access to Justice Act, 5 U.S.C. § 504; 28 U.S.C. § 2412; 25 U.S.C. § 450m-1(c) and other applicable law; and

D. Such other monetary, declaratory and equitable relief as this Court may find to be just.

Respectfully submitted this 31st day of October 2014.

SONOSKY, CHAMBERS, SACHSE,  
MILLER & MUNSON, LLP

*/s/ Lloyd B. Miller*

By: \_\_\_\_\_

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